

Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of)
)
Facilitating the Provision of Spectrum-Based) WT Docket No. 02-381
Services to Rural Areas and Promoting)
Opportunities For Rural Telephone Companies)
to Provide Spectrum-Based Services)

To: The Commission

REPLY COMMENTS OF CINGULAR WIRELESS LLC

Cingular Wireless LLC (“Cingular”), by its attorneys, hereby replies to comments filed in response to the *Notice of Inquiry* in the above-captioned proceeding.¹ Specifically, Cingular advocates the implementation of rules designed to facilitate a robust and efficient secondary market, which, in turn, will stimulate growth and facilitate the development of spectrum-based services in rural areas. Several commenters recognized that market-driven solutions promote economies of scale and facilitate rural development.² Use of flexible, market-based approaches not only benefits incumbents by reinforcing regulatory certainty, but it gives other entities, such as rural telephone companies (“rural telcos”), the opportunity to gain access to additional spectrum for new services.³

As discussed below, Cingular opposes proposals that would adversely impact the rights of incumbent CMRS licensees. In this regard, Cingular opposes the adoption of the “commons”

¹ *Facilitating the Provision of Spectrum-Based Services to Rural Areas and Promoting Opportunities For Rural Telephone Companies to Provide Spectrum-Based Services*, WT Docket No. 02-381, *Notice of Inquiry*, FCC 02-325 (rel. Dec. 20, 2002) (hereinafter “*NOI*”).

² *See, e.g.*, CTIA Comments at 6.

model for unserved areas and urges the Commission to retain its existing build-out requirements and geographic service areas for existing wireless services. Finally, Cingular opposes adoption of a mandatory roaming requirement.

I. SERVICE TO RURAL AREAS WILL BE EXPEDITED BY THE CREATION OF ROBUST SECONDARY MARKETS

A. Secondary Markets Facilitate Spectrum Access and Promote Spectrum Opportunities for Rural Telcos

Cingular agrees with those commenters that support the use of secondary markets to promote spectrum access and deployment of wireless services in rural communities.⁴ As the Commission noted in the *NOI*, the “issues involving spectrum leasing opportunities are of significant interest to rural telcos” who have “expressed interest in gaining access to spectrum usage rights through secondary markets.”⁵ A robust and effective secondary market - one that provides for opportunities such as spectrum leasing and joint operating arrangements - is the best solution for more efficient use of spectrum in rural areas.⁶

A secondary market approach offers several benefits to rural entities as well as incumbent licensees. Notably, a market-oriented solution reinforces regulatory certainty by recognizing the reasonable expectations held by incumbent licensees when they purchased the spectrum at auction⁷ and the importance of long-range planning in the deployment of wireless services.

³ See *Spectrum Policy Task Force Report*, ET Docket No. 02-13, at 57 (rel. Nov. 7, 2002).

⁴ See, e.g., Monet Mobile Networks Comments at 4-5; CTIA Comments at 7; National Rural Telecommunications Cooperative Comments at 10.

⁵ *NOI* at ¶14.

⁶ *Promoting Efficient Use of Spectrum Through the Elimination of Barriers to the Development of Secondary Markets*, WT Docket No. 00-230, *Notice of Proposed Rulemaking*, 15 F.C.C.R. 24203 (2000) (“*Secondary Markets* proceeding”). The Commission should expeditiously conclude its consideration of secondary markets in the *Secondary Market* proceeding.

⁷ United States Cellular Corporation (“USCC”) Comments at 2, 11.

Some commenters scoffed at the idea that national carriers prioritize expansion of their systems based on what can be justified economically. However, what these commenters fail to realize is that long-range planning benefits *all parties* by promoting long-term economic viability of wireless carriers through the efficient allocation of limited resources. This, in turn, benefits rural consumers by allowing for smart and steady growth.

A fundamental component of long-range planning necessarily includes spectrum that is designated for future growth. Understandably, this can be particularly frustrating for consumers who reside in small rural communities with low population densities.⁸ The Commission should understand that carriers must prioritize cell deployment based on economic factors.⁹ As such, Cingular believes that a secondary market approach is the best solution for promoting spectrum access for new entrants. With a dynamic secondary market, a carrier would be able to lease spectrum to companies willing to serve rural areas while the carrier is building-out its network and enhancing its service.

B. Partitioning and Disaggregation Should Not Be Mandated

Cingular opposes the imposition of *mandatory* partitioning and disaggregation. Although several commenters advocate this approach, such measures would unfairly penalize incumbent

⁸ For example, the City of Viburnum (“City”) highlighted correspondence between Cingular and the City where Cingular stated:

We have evaluated your request for a cell site for the City of Viburnum, and agree the need exist[s]. However, when Cingular prioritizes the needs for cell sites, Viburnum does not make the list for budgeted sites for the next 2-3 years. Cingular’s ability to place a site in Viburnum will be re-evaluated at that time, or sooner if market conditions change.

See City of Viburnum Comments at 2. Contrary to the City’s assertions, Cingular’s response underscores that its interest in providing future service to small rural communities is not a speculative endeavor. Rather, Cingular’s response illustrates that it has a business plan and budget to extend wireless service throughout its market. Recognizing that almost every rural community has a need for wireless service, these communities cannot all be served at once. Cingular must prioritize deployment in these areas.

licensees.¹⁰ Incumbent licensees had a reasonable expectation when they purchased their licenses at auction that they were purchasing the right to serve (within the parameters of service-specific guidelines) the entire market. These carriers formulated business plans based on the existing rules.

As Cingular previously explained, “[u]ncertain or ill-defined rights make it difficult for both buyers and sellers to value properties; they cause markets to work less efficiently.”¹¹ The Commission risks market failure when it allocates rights that may be subject to significant change by regulators in the future. Accordingly, the Commission should not require mandatory partitioning and disaggregation in rural areas.

Should the Commission choose to impose such requirements, however, it should do so only on a prospective basis. To impose these requirements retroactively would be extremely unfair to incumbent licensees and would only serve to undermine the value of exclusive licenses. The better approach is to promote robust secondary markets that will facilitate partitioning and disaggregation in rural areas.¹²

⁹ USCC Comments at 10.

¹⁰ See, e.g., National Telecommunications Cooperative Association (“NTCA”) Comments at 12; Spectrum Alliance Comments at 5 (Advocates “fill-in policy”).

¹¹ See Cingular Wireless LLC Comments, ET Docket 02-135 at 7 (filed Jan. 27, 2003) (“SPTF Comments”). Spectrum management is dependent on license auctions; thus, it is essential that rights and responsibilities be defined without ambiguity.

¹² *Id.* at 6. The Commission should focus on the secondary market approach (which would include flexible partitioning and disaggregation) rather than “attempting to optimize specific geographic service areas.” Cingular agrees with the Commission that it is important to adopt service areas of a size that results in efficient and intensive use of spectrum resources. See *NOI* at ¶7. However, Cingular disagrees with the Commission’s assumption that disseminating licenses to a wide number of licensees will serve the Commission’s goal of facilitating services to rural communities. *Id.* Wireless services tend to thrive on geographic service areas that have national and regional coverage. Deploying wireless service is a capital-intensive endeavor and many rural markets would not be able to support a number of competitors – because a provider could not hope to make a return on its investment. Moreover, rural customers benefit from a national geographic service area by being able to take advantage of national and regional service prices and plans.

Voluntary partitioning and disaggregation can serve as an “important regulatory tool to encourage deployment in rural and unserved areas.”¹³ The Commission should adopt policies that offer licensees the flexibility to partition and disaggregate spectrum as their markets continue to evolve. Flexible partitioning and disaggregation policies could eliminate unnecessary regulation and reduce administrative costs, which, in turn, would promote service to rural areas. Furthermore, voluntary partitioning and disaggregation will likely increase if there is a vibrant secondary market. Under a secondary market approach, prior Commission approval of partitioning and disaggregation agreements will be unnecessary. Thus, transaction costs will be reduced. Accordingly, the Commission should not adopt a mandatory partitioning and disaggregation requirement and instead should focus on decreasing the transaction costs inherent in the current regulatory approach to partitioning and disaggregation.

II. THE COMMISSION SHOULD REJECT THE “COMMONS” APPROACH FOR CELLULAR UNSERVED AREAS AND STREAMLINE ITS CURRENT APPROACH TO THESE AREAS

The Commission should reject the “commons” model as a means of promoting service to rural areas.¹⁴ The use of the commons model in this context will almost certainly cause serious interference to adjacent licensees.¹⁵ Tracking down the source of interference from unlicensed devices will be difficult – if not impossible. Licensees would have to police the interference issue and pinpoint the source(s) of interference. This may be difficult as unlicensed devices proliferate and operate in close proximity to the adjacent licensee’s spectrum. Interference emanating from multiple unlicensed devices also is problematic and could lead to degraded service quality (also resulting in diminished capacity and coverage). Absent constant monitoring

¹³ See Western Wireless Corporation (“Western”) Comments at 32.

¹⁴ NOI at ¶24.

¹⁵ See, e.g., CTIA Comments at 10.

over harmful interference, the availability and reliability of services will be diminished due to the diversion of limited resources to interference mitigation.¹⁶

Furthermore, it is doubtful that the commons model will spur development of quality service in rural areas.¹⁷ While the commons model may provide additional spectrum to newcomers in the short term, it is difficult to see why new entrants would make substantial investments to provide service in rural areas without the benefit of interference protection. Without a protected interest in the use of a block of spectrum, a licensee would be less able to measure the spectrum's capacity and value and would, as a result, be less willing to invest in the facilities needed to make efficient and productive use of it.¹⁸

As Cingular proposed in the *Part 22 Biennial Review* docket,¹⁹ the Commission should streamline the cellular unserved area procedures to allow the remaining unserved area in cellular geographic service areas to automatically revert to the incumbent licensee's CGSA, except for unserved areas greater than 50 square miles in size.²⁰ This approach has several benefits.

First, this proposal would greatly promote administrative efficiency, for both licensees and the FCC, and create more certainty as to the location of each cellular licensee's CGSA. Second, this approach would allow incumbent licensees to serve rural areas more quickly by

¹⁶ SPTF Comments at 17.

¹⁷ While it is unclear whether additional unlicensed spectrum is needed in urban areas where there is greater demand for unlicensed products and services, it is difficult to imagine how there could be a "tragedy of commons" of unlicensed spectrum in rural markets necessitating a commons model in rural markets.

¹⁸ *Id.* at 7; CTIA Comments at 10; USCC Comments at 11-12.

¹⁹ *Year 2000 Biennial Regulatory Review – Amendment of Part 22 of the Commission's Rules to Modify or Eliminate Outdated Rules Affecting the Cellular Radiotelephone Service and other Commercial Mobile Radio Services*, WT Docket No. 01-108, *Notice of Proposed Rulemaking*, FCC 01-153 (rel. May 17, 2001) ("Part 22 Biennial Review").

²⁰ Cingular Part 22 Biennial Review Comments at 25. Areas greater than 50 square miles would be subject to a one-time filing window and subsequent auction.

permitting them to expand without needing prior site-specific FCC approval.²¹ Third, this proposal provides valuable spectrum leasing opportunities for new entrants who desire to share spectrum with the incumbent licensee in an interference-free environment. Rather than seek Commission approval for a new system and waiting to see if competing applications are filed, new entrants could commence operations immediately after entering into a lease with the incumbent licensee.

III. THERE IS NO NEED TO SIGNIFICANTLY ALTER THE CURRENT PCS BUILD-OUT REQUIREMENTS

A few commenters argue that the Commission should adopt stringent performance requirements to ensure that PCS licensees serve all rural communities.²² These commenters argue that stricter “use it or lose it” build-out requirements “provide incentives” for carriers to build-out rural areas. Included in their proposals is the recommendation that the FCC adopt geographically-based build-out requirements.²³ The Commission should reject this approach.

The Commission’s spectrum management policy must create certainty. Absent certainty, the marketplace will not operate effectively. PCS licenses were acquired via a competitive bidding process. Winning bidders based their license valuation on rights and obligations that existed at the time of the auction. It would undermine the integrity of the auction process to change the rules of the game after the auction is concluded. Moreover, imposing rural build-out requirements would invalidate many business plans.

For these reasons, the Commission should retain the current population-based build-out requirements for PCS services. Population-based benchmarks provide greater flexibility in

²¹ In this regard, Cingular supports liberalization of the height/power limitation in rural areas.

²² *See, e.g.*, OPASTCO Comments at 12; NTCA Comments at 12.

²³ *Id.*

deployment and enable build-out to a larger number of customers than geographic requirements.²⁴ Build-out requirements that ignore marketplace realities will only disrupt a licensee's efficient allocation of resources, misdirect the application of those limited resources, and, in turn, deprive high quality service to subscribers and rural-based roamers operating in more densely populated areas.

IV. THE COMMISSION SHOULD NOT ADOPT A MANDATORY ROAMING REQUIREMENT

Some commenters argue the Commission should adopt a mandatory or automatic roaming requirement, because they have been unable to successfully negotiate agreements with national carriers. One commenter even contended that “national[] [carriers] have so much territory themselves that they can usually enter into agreements with ... a couple of other major carriers and ensure that they have automatic roaming access almost anywhere in the United States.”²⁵ This is simply not the case. Cingular currently has 124 non-GSM roaming agreements and 225 GSM roaming agreements for a total of 349 roaming relationships. A number of smaller cellular carriers have successfully entered into roaming agreements with nationwide carriers.²⁶ Under the current system, small and rural carriers are bolstered because large carriers have a strong incentive to negotiate automatic roaming agreements with “all surrounding carriers” in order to enhance their footprint and promote their services.²⁷

Indeed, Cingular is among a growing group of carriers that have expanded their holdings to achieve nationwide “footprints.” Despite this expanded reach, these carriers still have gaps in

²⁴ Western Comments at 33.

²⁵ Corr Wireless Communications Comments at 11.

²⁶ See Cingular Wireless LLC Comments, WT Docket No. 00-193, at 3 (filed Jan. 5, 2001) (“Automatic Roaming Comments”).

²⁷ *Id.*

coverage.²⁸ As such, there is a strong incentive for companies like Cingular to negotiate automatic roaming agreements with small and rural carriers in order to fill these gaps and, in turn, provide better coverage and services than their competitors. Small and rural carriers are benefiting from these arrangements as the industry as a whole has been moving away from manual roaming arrangements, opting instead to pursue automatic roaming agreements that would allow carriers to provide seamless coverage.

As explained in Cingular's comments in the *Automatic Roaming* proceeding, mandatory roaming would generate increased administrative costs for carriers, and require carriers to apply significant resources toward purchasing and installing equipment that is capable of accommodating the additional capacity needed to serve all of the carriers requesting automatic roaming agreements.²⁹ Such a rule also would strongly diminish the incentives for carriers to build out their networks and permit carriers that fail to build out their networks to rely on the superior coverage of its competitor. Accordingly, Cingular opposes the adoption of an automatic roaming rule.

CONCLUSION

As noted above, the best solution for expediting service to rural areas is the creation of vibrant secondary markets. Accordingly, the Commission should conclude its long-pending *Secondary Market* proceeding. The Commission also should refrain from adopting a "commons" model for cellular unserved areas and should retain the existing build-out requirements and geographic size of existing licenses. The Commission should reject proposals that would undermine the rights of incumbent licensees, thereby injecting substantial uncertainty

²⁸ Margo McCall, *The Strong (and Merged) Survive*, Wireless Week, Oct. 23, 2000, at 35.

²⁹ Automatic Roaming Comments at 8.

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